

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STANDING ORDER

IN RE: Administration of Guardianships in the Court of Chancery

WHEREAS, it has come to the Court's attention that a number of changes in procedure will improve the administration of guardianships established by this Court,

THEREFORE, it is Ordered this 5th day of March, 2009 the following procedures shall apply in all guardianship cases:

- 1) All initial guardianship petitions shall be accompanied by the revised physician's affidavit in substantially the form attached to this Standing Order and available on the Court of Chancery website. Additionally, the personal information form must also accompany each petition for appointment of guardian.
- 2) Any form of order submitted as a proposed final guardianship order shall include a paragraph discharging the attorney ad litem from further service as attorney for the disabled person.
- 3) In any case in which a final guardianship order requires the guardian to execute a bond, the bond must be executed, notarized and e-filed within seven (7) days of the entry of the order. No copy of the final order, whether certified or not, will be released until the bond is e-filed.
- 4) Any form of order submitted as a proposed final guardianship order by an attorney on behalf of the guardian shall include a paragraph stating that the guardian's attorney is responsible to ensure that any guardianship bank account called for in the final order is properly opened and that the proof of compliance is e-filed within 30 days.

- 5) Any inventory required by a final order appointing guardian of the property must be e-filed by the filing attorney within 30 days.
- 6) Any form of order filed by an attorney on behalf of a guardian as a proposed final guardianship order shall be accompanied by an affidavit filed by the attorney stating that he has explained to the guardian the fiduciary duties and responsibilities of a guardian, in substantially the form attached to this Standing Order and available on the Court of Chancery website.
- 7) Effective immediately, the Court of Chancery will permit attorneys of record in Petitions to establish a Guardianship to withdraw without filing a formal motion to withdraw provided that:
 - a) the form of final order appointing a guardian includes language that the attorney shall be discharged upon the entry of the order and filing of the bond, proof of compliance of guardianship account(s) being established and inventory (unless waived by the Court), and
 - b) the petitioner's notarized consent to this withdrawal is provided to the Court.

Unless the attorney is permitted to withdraw pursuant to Chancery Court Rule 5 (aa) or as set forth above, the attorney shall be considered the attorney of record. All subsequent pro se filings shall be served upon the attorney.

- 8) The annual update and medical statement must be attached to the yearly financial accounting prior to the Court's approval of the accounting.

/s/ William B. Chandler III
Chancellor William B. Chandler III

Attachments: 2

PHYSICIAN'S AFFIDAVIT

NOTE: This affidavit will be used in a legal proceeding to appoint a guardian for the patient named below. The information it contains must be based on your personal examination of the patient. Thank you for your concern and cooperation.

PATIENT'S NAME: _____

ADDRESS: _____

I, _____ located at _____
(provider's name) *(address)*

(telephone number)

I am licensed to practice in the United States in the following states:

_____.

I am board Certified in _____.

This history of my involvement with this patient is the following:

I personally examined _____ on _____, 20____.
(Patient's Name)

The examination lasted approximately _____.
(time)

I performed or ordered the following tests: _____

Based on tests and my examination of this patient, it is my professional opinion that s/he

☐ **does not have** a disability that interferes with the ability to make or communicate responsible decisions regarding health care, food, clothing, shelter, or administration of property.

☐ **does have** a disability that interferes with the ability to make or communicate responsible decisions regarding health care, food, clothing, shelter, or administration of property.

The particulars of the disability are as follows: _____

The patient is unable to perform the following functions: _____

☐ In my opinion, the patient **does have** sufficient mental capacity to understand the nature of guardianship and **can** consent to the appointment of a guardian.

☐ In my opinion, the patient **does not have** sufficient mental capacity to understand the nature of guardianship and **cannot** consent to the appointment of a guardian.

I solemnly swear and affirm under the penalties of perjury and upon personal knowledge that the contents of this petition are true.

Date

Provider's Signature

Printed Name

STATE OF DELAWARE :

COUNTY OF _____ :

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20____.

Notary Public

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF:

:

C.M. No.

:

a disabled person

:

AFFIDAVIT

I, _____, Esquire, being duly sworn according to law,
deposes and says as follows:

1. I am the attorney of record in the above-captioned matter and that the information contained herein is true and correct.
2. I am an active member of the Delaware Bar.
3. I represent the Petitioner(s), _____.
4. I have explained to the Petitioner(s), his/her duties upon appointment as guardian of the person and property of the disabled person as set forth in 12 *Del. C.* § 3901 *et seq.*
5. I have explained to the Petitioner(s) that he/she is to make decisions concerning the care of the disabled person based upon what is in the best interest of the disabled person and not based upon his/her personal interest.
6. I have explained to the Petitioner(s) that he/she is only to use the disabled person's assets for the benefit of the disabled person and not for his/her own benefit or for the benefit of any other person.
7. I have explained to the Petitioner(s) that he/she is required to file an inventory with the Court of the disabled person's assets within thirty days of his/her appointment as guardian, pursuant to 12 *Del. C.* § 3921.

8. I have explained to the Petitioner(s) that he/she is required to file an annual accounting with the Court of the disabled person's assets and expenditures each year on the anniversary of the guardian's appointment as guardian and at such times thereafter as required by the Court, pursuant to 12 *Del. C.* § 3941, 3943 unless the Court waives this requirement.
9. I have explained to the Petitioner(s) that he/she will be required to sign a bond with the Court within seven days upon his/her appointment as guardian, pursuant to 12 *Del. C.* § 3905.
10. I have explained to the Petitioner(s) that he/she will be required to open a guardianship account and to transfer all of the assets of the disabled person into the guardianship account upon appointment as guardian unless the Court waives this requirement.
11. I have explained to the Petitioner(s) that he/she will be required to file an annual status/medical update with the Court, pursuant to Chancery Rule 180 B.
12. I, as the attorney for the Petitioner(s), understand that I will be required to file a proof of compliance with the Court of the opening of the guardianship account within thirty days of my client's appointment as guardian to demonstrate that the guardianship account has been properly opened, unless the Court waives this requirement.

Date
and full signature block)

Attorney (with Bar ID

STATE OF DELAWARE :

: ss.

COUNTY OF _____ :

SWORN TO AND SUBSCRIBED before me this _____ day of
_____, 20____.

Notary Public